No. 96-53

(3)

Supreme Court, U.S.
FILED
SEP 13 1996
CLERK

In The

Supreme Court of the United States

October Term, 1995

BILLY F. PRICE, *et al.*,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

REPLY BRIEF FOR PETITIONERS

ROBERT I. WHITE
Counsel of Record
SHELLEY CASHION
LARRY A. CAMPAGNA
LAWRENCE SHERLOCK
CHAMBERLAIN, HRDLICKA,
WHITE, WILLIAMS & MARTIN
Attorneys for Petitioners
1200 Smith, 14th Floor
Houston, Texas 77002
(713) 658-1818

8841
Lutz Appellate Services, inc.
(800) 3 APPEAL • (800) 5 APPEAL • (800) BRIEF 21

30 pp

TABLE OF CONTENTS

Page

Further Reasons for Granting the Writ 1

I. As applied by the Fifth Circuit to this case, TWEA violated the due process and the taking without compensation clauses because Section 9 of TWEA at all times denied the Hoffmanns standing to challenge the admittedly void vesting order. 1

II. Newly-produced Army documents demonstrate that the vesting order was contrived by Government officials as an attempt to "paper" the Army's desire to retain possession of the photographs that were known to be the private property of the Hoffmanns. 3

III. The court of appeals made improper findings of fact and overruled undisputed facts previously found by the district court. 6

Conclusion 8

TABLE OF CITATIONS

Cases Cited:

Ecker v. Atlantic Refining Co., 222 F.2d 618 (4th Cir.), *cert. denied*, 350 U.S. 847 (1955) 2

Guessefeldt v. McGrath, 342 U.S. 308 (1952) 2

Contents

	Page
Russian Volunteer Fleet v. United States, 282 U.S. 481 (1931)	2
Schmeusser v. Katzenbach, 355 F.2d 77 (10th Cir.), *cert. denied*, 384 U.S. 941 (1966)	2
Societe Internationale Pour Participations Industrielles et Commerciales, S.A. v. Rogers, 357 U.S. 197 (1958)	2
Statutes Cited:	
50 U.S.C. App. § 7	5
50 U.S.C. App. § 7(c)	2
50 U.S.C. App. § 9	1, 2, 5
50 U.S.C. App. § 9(a)	1
United States Constitution Cited:	
Fifth Amendment	2, 3
APPENDIX	
Appendix 1	1a
Appendix 2	3a
Appendix 3	5a

Contents

	Page
Appendix 4	7a
Appendix 5	9a
Appendix 6	12a
Appendix 7	14a
Appendix 8	16a

FURTHER REASONS FOR GRANTING THE WRIT

I.

As applied by the Fifth Circuit to this case, TWEA violated the due process and the taking without compensation clauses because Section 9 of TWEA at all times denied the Hoffmanns standing to challenge the admittedly void vesting order.

In its Brief the Government implicitly agrees that the 1951 vesting order was legally invalid because the Government does not contest that the Trading with the Enemy Act ("TWEA") only applied to property, owned by Germans prior to January 1, 1947, physically in the United States before that date. The Washington Archive was in Germany until 1950 and arrived in the United States almost four years after January 1, 1947, the date when hostilities concluded and vesting authority for that property ceased.

Instead, the Government argues (Br. 5) that the court of appeals correctly held that the Hoffmanns' exclusive remedy for recovery of the Washington Archive is under the TWEA. That argument demonstrates TWEA's unconstitutional application in this case.

The only remedy granted by TWEA for a complaint about a vesting order could never apply to the Hoffmanns. Section 9(a) of TWEA (Pet. for Cert. at 48(a)) provides (emphasis added):

> Any person *not an enemy* or ally of an enemy claiming any interest, right or title in any money or other property which may have been conveyed, transferred, assigned or delivered * * * [to the Alien Property Custodian] may file . . . a notice of his claim. . . .

This language is reinforced by TWEA Section 7(c) (Pet. for Cert. at 48(a)), in which it is stated that "[t]he sole relief and remedy of any person having any claim" shall be "that provided by the terms of" the TWEA.

By definition, then, the Hoffmanns, the predecessors of the German Petitioners, had no standing under TWEA to make a claim that the Government had no power under the TWEA to create a vesting order and that the vesting order was a nullity. As German citizens before January 1, 1947, they were, by definition, "enemies." *See Guessefeldt v. McGrath*, 342 U.S. 308 (1952);*Schmeusser v. Katzenbach*, 355 F.2d 77 (10th Cir.), *cert. denied*, 384 U.S. 941 (1966); *Ecker v. Atlantic Refining Co.*, 222 F.2d 618 (4th Cir.),*cert. denied*, 350 U.S. 847 (1955).

The legal absurdity produced by the Fifth Circuit's opinion is that the only remedy available to the Hoffmanns was (a) a timely claim under the TWEA (b) for relief from the illegal vesting of their private property under circumstances not authorized by the TWEA, (c) even though, as "enemies," they had no legal standing to ever bring such a suit!

The Fifth Circuit's construction of TWEA clearly violates the due process and just compensation clauses. *Cf. Societe Internationale Pour Participations Industrielles et Commerciales, S.A. v. Rogers*, 357 U.S. 197, 211 (1958); *Russian Volunteer Fleet v. United States*, 282 U.S. 481, 492 (1931). These cases make clear that TWEA is saved from constitutional challenge only by Section 9. When Section 9, by its terms, cannot apply, issuance of a vesting order in violation of the requirements of TWEA is a*per se* violation of the Fifth Amendment, giving rise to a cause of action in tort or under the Tucker Act.

If the Fifth Amendment has any meaning, certiorari should

be granted in this case. Under TWEA, the only rights "enemies" have are those defined by the limits of the legislation. Moreover, the Government could only seize German-owned property physically in the United States during the period between declaration and cessation of hostilities, as declared by the President. The construction of TWEA authorized by the court of appeals removes all judicial power to police administration of this congressionally-declared inroad into the Fifth Amendment in circumstances in which the statute itself provides no review.

Simply put, since Vesting Order 17952 was a nullity and since the Hoffmanns had no standing at any time to challenge that illegal vesting order under TWEA, TWEA has no effect in this suit. As a consequence, the Hoffmanns retained title to the Washington Archive and thus were free to convey it to Petitioner Price, and the FTCA procedure followed by Price and alternatively by the Hoffmanns is appropriate.

II.

Newly-produced Army documents demonstrate that the vesting order was contrived by Government officials as an attempt to "paper" the Army's desire to retain possession of the photographs that were known to be the private property of the Hoffmanns.

In the portion of this case that the Fifth Circuit returned to the district court, the Government for the first time produced all of the Army's records relating to the Washington Archive. Those records show that the Army knew that, at best, it had a dubious claim to title to the photographs[1].

---

1. The attached appendix is not in the record of this case. It consists of newly discovered documents (at least as to Petitioners) produced by the (Cont'd)

In December 1948 General Malony of the Pentagon, recognizing that the Hoffmann photographs were privately owned, ordered a subordinate in Europe to locate all Hoffmann negatives and ship them to the U.S.A. (pp. 1a-2a, *infra*). By March of 1949 the Army had tracked down a portion of the Hoffmann photographs at the War Crimes Commission at Nurnberg, but no negatives, and decided to take custody of the photographs when the War Crimes Commission concluded its work (pp. 3a-8a, *infra*). The correspondence culminates in March 1951 in an exchange of communications dealing with what position the Army should take with regard to these photographs in order to be in a position to retain them; by then the Army lawyers had supplied opinions to the effect that the Army had legal possession but no title to the Hoffmann photographs (pp. 9a-15a,*infra*). As a result of coaching (p. 15a, *infra*), the Army personnel involved knew that the Army's best case was to claim that it had "seized" the Hoffmann photographs in furtherance of objectives set out in the Potsdam Agreement. This position was not a fact but a legal argument that gave the Army some justification for continued possession of the photographs.

Having brought the Hoffmann photographs — legally in its custody — to the United States in late 1950, and at the same time recognizing its tenuous right to continued possession (pp. 12a-13a,*infra*) and its possible obligation to pay compensation (pp. 10a-11a,*infra*), in May 1951 the Army in Virginia came up

---

(Cont'd)

Government pursuant to the district court's order of May 15, 1996. The vesting order was not raised by the Government as a defense in the captioned case until after summary judgment was entered against the Government. Upon raising the vesting order, the district court struck the pleading as untimely. Then, the court of appeals relied on the vesting order as the sole basis of its opinion. Consequently, there was no discovery and no finding of facts by the district court on the vesting order issue.

with the idea of obtaining a vesting order under the TWEA. General John Klein signed a footnote on the Army's request to the Department of Justice to obtain a vesting order reading as follows (pp. 16a-18a, *infra*, emphasis added):

> The * * * [Office of Alien Property] is not interested in knowing the opinion of * * * [the Army lawyers in Europe] nor in seeing the claims of Heinrich Hoffmann, Jr. *Request for * * * [the vesting order] was initiated as a result of the present efforts of Heinrich Hoffmann, Jr., son of the originator of the collection, to have the collection returned to him.*
>
> * * * [Judge Advocate's General's Office] * * * first comment about the above case was that vesting was not necessary since JAGO deemed Army already had legal title to the collection, but after talking with Mr. Green, JAGO *felt that vesting would strengthen Army's legal hold on the collection.*

So, through the devious conduct described above, the Hoffmann File was brought to the United States in late 1950 and Vesting Order 17952 was issued in May 1951. This vesting order was an act that Department of Justice personnel had no statutory power to take. It was issued in violation of law. Yet, because of Sections 7 and 9 of TWEA, the Government and the appellate court conclude that the Hoffmanns' remedy was a suit to challenge the illegal vesting order within the two-year period provided by TWEA even though they had no standing to sue under TWEA.

When personnel of the United States Government, particularly high officers in the Army and high officials in the Department of Justice, knowingly violate the very laws that their oaths of office require them to defend, it is inconceivable that our courts fail to provide a viable remedy. But that is the result of the Fifth Circuit's opinion. Certiorari should issue to correct the Fifth Circuit's unconstitutional construction of TWEA. Alternatively, Petitioners move the Court to remand the case to the Fifth Circuit, ordering that court to vacate its opinion and to remand the case to the district court to permit fact finding on the extent of the Government's employees' complicity in issuing the illegal vesting order.

III.

The court of appeals made improper findings of fact and overruled undisputed facts previously found by the district court.

In arguing that the court of appeals did not make improper fact findings, the Government points out (Br. 2-3) that in order to "denazify" Europe, the United States Military Government called for the seizure of all art dedicated to the perpetuation of the Nazi movement or German militarism, and that some 8,000 pieces of art were taken to the United States pursuant to this procedure. The implication from this recitation is that the four watercolors were taken pursuant to this "denazification" program. However, the undisputed facts established in the district court are that the taking of the four watercolors was not pursuant to any denazification program but rather resulted from a random selection by an Army officer of works of art that might be "interesting additions" to the Army's collection.[2]

---

2. The Army published a brochure incident to its showings of the watercolors at exhibitions around the United States. The brochure recites:

(Cont'd)

The Government (Br. 8) then recites the facts found by the Fifth Circuit, to the effect that the Army must have intended to hold the four watercolors painted by Hitler because it returned two non-Hitler paintings to Hoffmann Jr. (Br. 9.) Both the appellate court and the Government fail to note that the trial record shows that Hoffmann Jr. owned the two non-Hitler paintings that were returned to him. However, Hoffmann Sr., who was in jail at the time, owned the four watercolors painted by Hitler. Quite naturally, Hoffmann Jr. had no standing to claim return of paintings belonging to his father. Hoffmann Sr. was unavailable to make any claim as to the four Hitler watercolors. The appellate court's improper fact finding cannot be squared with the undisputed evidence in the district court.

Further, the Government stated (footnote 2) that the court of appeals' fact finding relating to "control" vs. "confiscation" is legally immaterial. As we point out in the Petition (p. 25), Petitioners would have prevailed in the court of appeals if *beschlagnahme* were translated as "control."

Lastly the Government alludes (Br 11) to the 1954 Settlement Convention between Germany and the United States and the Anti-Assignment Act. Both these issues were decided against the Government on the facts in the district court and were not addressed by the court of appeals.

(Cont'd)

"The four paintings owned by the Army were picked up by Army historians at the Wiesbaden Collection Point in Germany. Their previous location is uncertain but there is reason to believe they were in Hitler's possession. If so, why did he retain these particular paintings? Did they recall pleasant memories of his youth or bitter ones that might better have been forgotten by this would-be artist who became a worldwide symbol of terror."

CONCLUSION

For the reasons set forth above and in the Petition for Writ of Certiorari, this case should be reviewed by the Court. Alternatively, if the Court decides that a Writ of Certiorari is not to be issued, Petitioners move the Court to remand this case to the court of appeals with instructions to vacate its order and remand the case to the district court for findings of fact and conclusions of law relating to the role of the Army and Department of Justice officials in causing the void vesting order to be entered and relating to the extent of Army actions in Europe adverse to Hoffmann Sr.'s interests relating to the watercolors. Support for this motion and the reasons for granting same are:

(a) newly discovered evidence, part of which is set out in Appendices 1-8, shows the complicity of officials of the Army and Department of Justice in arranging for the issuance of the void vesting order for the sole purpose of permitting the Army to have void paper title to the Washington Archive and at the same time create a situation in which the German owners could be forced to seek relief only under the TWEA but at the same time had no standing to do so; and

(b) The court of appeals overruled summary judgment facts found by the district court and substituted its own contradictory fact-findings that are inconsistent with the evidence before the district court.

Respectfully submitted,

ROBERT I. WHITE
Counsel of Record

Dated: September 12, 1996

APPENDIX 1

DEPARTMENT OF THE ARMY
SPECIAL STAFF, UNITED STATES ARMY
WASHINGTON 25, D.C.

30 DEC 1948

SUBJECT: Hoffman Photographic Negative file.

TO: Chief, Historical Division
Headquarters, EUCOM
APO 757, c/o Postmaster
New York, New York

1. It is requested that you locate, if possible, and ship to the Chief, Historical Division, SSUSA, the file of photographic negatives which is reported to have been assembled by one, Hoffman, the personal photographer, who accompanied Hitler on his trips and made a photographic record of the period.

2. Information regarding this file is very slight. Hoffman is understood to have been very close to Hitler even from the beginnings of the Nazi party. His place of business was in Munich. At the end of the war he was arrested by U.S. Forces. As far as we know, he was turned over to, tried, and convicted by a German court on charges of having been a Nazi. He is supposed to be in prison in the American Sector, probably near Zurich. We believe that the O.S.S. was interested in his file in 1945 and that the Nuremberg trials people also expressed an interest therein. Both of these agencies were interested in prints only and it is probable that parts of his print file may be in American hands. We have little or no interest in the Hoffman prints as the majority of the prints that have come to our attention have been poor in quality and without identifying

information. The Hoffman negative file, however, is reported to be complete with information on filing envelopes.

3. Hoffman attended practically all the historically important conferences as Hitler's personal photographer, in a great many cases he is the only photographer present. He was not an "official" photographer, but attended all these meetings in a private capacity so that technically, his files are probably his personal property.

4. In your conversation with Colonel A. S. Hartman and Major J. C. Hatlem of this Division on 27 December, 1948, you asked about getting aerial photographs made of the Anchen area. It is suggested that you contact Colonel R. R. Smith, Commanding Officer, 45th Reconnaissance Squadron, USAF, Furstenfeldbruck Air Force Base, A.P.O. 208, U.S. Army. His telephone is Furstenfeldbruck, Extension 225. Colonel Smith is familiar with the work Major Hatlem did and was most cooperative in helping him get the serial photographs we needed.

s/ Harry J. Malony
HARRY J. MALONY
Major General, USA
Chief, Historical Division

APPENDIX 2

21 February 1949

SUBJECT: Disposal of "Hoffmann" Film and Photographic Archive

TO: Commanding General, Office of Military Government for Germany (US), APO 742, US Army

1. Permission is requested to transfer an archive of films and photographs know as the "Hoffmann File" from the Chief of Counsel for War Crimes to the Historical Division, EUCOM.

2. The archive known as the "Hoffmann File" is what remains of the archive of press photographs of the German firm "Presse-Illustrationen-Heinrich Hoffmann." For a detailed description and list of contents of the "Hoffmann File" see Inclosure 1.

3. Colonel H. E. Potter, Director, Historical Division, EUCOM, has made a verbal request to the undersigned for this archive. Colonel Potter's request was based on correspondence concerning this matter that he has received from the Historical Division, Department of the Army.

FOR THE CHIEF OF COUNSEL:

DONALD T PAUL
Capt GSC
Executive Officer

Tel: Nurnberg 61120

1 Incl: a/s

Appendix 2

AG 007 (IS) 1st Ind/

Office of Military Government for Germany (US), Berlin, Germany, APO 742, US Army. 8 March 1949.

TO: Office of Chief of Counsel for War Crimes, APO 696a, US Army

1. Request contained in paragraph 1 of basic document is approved.

2. Please conduct the necessary liaison between your office and EUCOM to effect the transfer of the "Hoffmann File".

BY DIRECTION OF THE MILITARY GOVERNOR:

1 Incl. n/c

G.H. GARDE
Lieutenant Colonel, AGD
Adjutant General

Telephone BERLIN 42258

APPENDIX 3

Historical Division

APO 757
24 February 1949

Lt. Col. E. M. Harris
Executive Officer
Historical Division
Special Staff, US Army
Washington 25, D.C.

Dear Col. Harris:

* * *

Reference letter from your office dated 30 December 1948, subject: Hoffmann Photographic Negative File, we have been able to locate Hoffmann and his son. Hoffmann has been denazified and lives in Munich, but has turned his collection of photographs over to his son, who has been held by the OCCWS at Nurnberg for the past two years, first as a witness under custody and later as a free witness in connection with the trial of industrialists and military people and in the identification of these various accused individuals in photographs held in this collection. The attached memorandum secured from OCCWS, Nurnberg would seem to indicate a collection of 250,000 pictures but no negatives and we have been told that another six months will be required to complete titles and the index of all photographs. This division has agreed to hire young Hoffmann as a home worker to complete this work if the photographs are made available for our use. Once we get our hands on Hoffmann we will go into the matter of negatives and feel we have a better chance that anyone else of securing them.

Appendix 3

* * *

s/
t/ H. E. POTTER
Colonel, Infantry
Chief, Historical Division

(original filed 312.1 PERSONAL-Col POTTER,
To and From Hist Div Wash)

APPENDIX 4

COPY

14 March 1949

MEMORANDUM FOR: Colonel Potter

At 1440 hours Capt Paul of OCCWS telephoned that he had received authority from Berlin for the transfer of the entire Hoffmann photographic collection to the Historical Division. Capt Paul stated that he had previously been under the assumption that the collection would revert to the ownership of Hoffmann upon completion of its use by OCCWS. However, under the provisions of an Allied Control law custody of the photographic file will be retained by the Army.

In view of the eminent close out of OCCWS, Capt Paul would like our suggestions by telephone as to the following items:

a. Plans for accomplishing the physical transfer of the photographic file from Nurenberg to Frankfurt.

b. Plans for the possible employment of young Hoffmann.

Capt Paul suggested that young Hoffmann would be of great assistance for several months to come in the indexing of the file. He has been engaged on this project for the past six months and is believed to be the only person available for the completion of the indexing.

Appendix 4

RDH/lm

/s/ Raymond D. Hill
/s/ RAYMOND D. HILL
Major, Infantry
Control Officer

APPENDIX 5

DEPARTMENT OF THE ARMY
HISTORICAL DIVISION
Special Staff, United States Army
Washington 25, D.C.

CSHIS 24 Jan 1950

SUBJECT: Hoffmann File

TO: Chief, Historical Division
Hqs. EUCOM
APO 403, c/o Postmaster
New York, N.Y.

1. On 9 December 1949 you forwarded a "decision of the Judge Advocate, EUCOM, covering the legal title and use of the Hoffmann file of photographs and films" to us. This decision was felt to be obscure in the statement "although the Army did not thereby acquire title, it may hold and use the property, or destroy it."

2. The Judge Advocate General was asked to clarify the above and to answer these two questions:

a. Can these photographs and films legally be used in publications of the Historical Division?

b. Can the Historical Division grant permission to use these photographs to other publishers?

3. The Judge Advocate General declined to comment on the above until more information was available, such as:

Appendix 5

a. Has the material contained therein been published and, if so, was it copyrighted or otherwise protected by German law?

b. On what date and under what circumstances did the United States military authorities acquire possession of the file? Was it in fact surrendered to United States military authorities under Allied Control Council Order No. 4?

c. Has the file been used by United States or Allied military authorities for any purpose (as for instance, evidence in war crimes trials) since its acquisition?

d. Has the file constantly been in the possession of United States military authorities since its acquisition?

e. During the period of the compilation of the file in question, was the firm from which it was acquired privately owned, government-owned, or, in its production of the contents of the file, acting for or under contract with the German Government?

f. Such other information relative to the file in question as may be available.

4. It is requested that you furnish a basis upon which to reply to the questions raised in paragraph 3, above, if possible.

5. The danger to taking action at this time lies in the possibility, if we use the Hoffmann file, that under the provisions of Article 53, Annex to the Hague Convention IV, the Army could be required to return it and fix compensation for

its use when peace is made. It is quite likely that no funds will be available to the Division for such a purpose at that time.

FOR THE CHIEF, HISTORICAL DIVISION:

s/ E. M. Harris

t/ E. M. HARRIS
Lt. Colonel, G.S.C.
Executive

APPENDIX 6

HEADQUARTERS, EUROPEAN COMMAND

FILE NO:

SUBJECT: The Hoffmann File DATE: 5 February 1951

No. 1
From c/Hist Div
Pages to JA Div ATTN: Col Hanley
Date 5 Feb 1951

1. Reference is made to telephone conversation this date between Col Young, Historical Division, and Col Hanley, JA Division, this headquarters; also to IRS from JA Division to Chief, Historical Division, dated 25 July 1950, subject: "Request for Determination of Ownership of Hoffmann Photographs", copy of which will be found in a complete photostat copy of the correspondence file in the so-called Hoffmann Case transmitted herewith.

2. It is desired to invite attention to a four-page letter from Heinrich Hoffmann, Jr., dated 17 June 1949 on the same subject contained in the file referred to above.

3. It is believed that the points made by Hoffmann, Jr., in his letter of 17 June 1949 should be re-examined in the light of current theater policy and in the light of the recent review issued by EUCOM in the Industrialists Case, particularly the remarks pertaining to Krupp.

4. Upon reading the attached file, it would appear that your decision of 25 July 1950 was based upon a very doubtful assumption, namely that the content of the so-called Hoffmann

Appendix 6

Photographic File was propagandistic in nature. This assumption has never been verified by any competent person or group of persons. Young Hoffmann claims that many of the photographs seized and confiscated in this file pertain to subjects totally unrelated to Hitler and the NSDAP. A very superficial examination of the contents of some of the boxes composing this file in the office of the Historical Division tended to confirm this contention of young Hoffmann. If it can be proven that a part of the Hoffmann Photographic File does not fall within the classification of property the existence of which is prejudicial to the United States Government and any of its agencies, then our retention of such property, it is believed, cannot be justified legally. Such property, it would seem, could be confiscated by the German Government as a penalty against Hoffmann but it would not by that fact become the property of the US Government.

5. We desire also to invite attention to young Hoffmann's argument that his firm has been the object of discriminatory treatment in that no other photographic firm in Germany, of which there were many doing the same type of business, has been subject to prosecution or seizure.

6. It is requested that your decision and recommendations concerning the Hoffmann File be reviewed in the light of the above comments and in the light of the apparently liberalized policy of this theater in such matters.

s/ W.S. Nye
W.S. NYE
Colonel, Artillery
Chief, Historical Division

1 Incl: Hoffmann File

THY/cmp/Karlsruhe Wil 622

APPENDIX 7

DISPOSITION FORM

FILE NO. HIS SUBJECT "Hoffmann Photographic File"

TO	JAG
FROM	O/C MIL HIS
DATE	18 MAR 1951
COMMENT NO. 1	Lt. Col James/sw/61106

1. Reference is made to inclosed letter from Chief, Historical Division, Hq. EUCOM, 6 Mar 51, forwarding letter from Heinrich Hoffman, Jr. to Historical Division HQ. EUCOM, 29 Jan 51, protesting the confiscation of the so-called "Hoffmann Photographic File" and to the recommendation of the Judge Advocate General, Hq EUCOM, 5 Feb 51, which are inclosed.

2. Information is requested as to whether the photographic file in question is legally being held by the Department of the Army.

FOR THE CHIEF OF MILITARY HISTORY:

s/ Carl I. Hutton
CARL I. HUTTON
Colonel, OSC
Executive

3 Incls

1. Ltr fm His Div, EUCOM
   to His Div, D/A
2. Ltr fm Heinrich Hoffman, jr
   to His Div, EUCOM
3. "Hoffmann Photographic File"

Appendix 7

JAGA 1951/2303

TO: Chief of Military History

FROM: The Judge Advocate General

DATE: 28 MAR 1951

COMMENT NO. 2 Capt. Williams/68585

Assuming, as is stated in the submitted file, that the Hoffmann photographic file was seized in furtherance of the objectives set out in subparagraph 3 III of the Potsdam Agreement, it is the opinion of this office that the confiscated photographic file is being legally held by the Department of the Army.

FOR THE JUDGE ADVOCATE GENERAL.

s/ Nathan J. Roberts
NATHAN J. ROBERTS
Colonel,
Chief, Military Affairs Division

3 Incls
n/c

APPENDIX 8

May 10, 1951

Mr. Harold I. Baynton
Director, Office Allen Property
Department of Justice
Washington 25, D.C.
Attn: Mr. Albert Green

Dear Sir:

This office has custody of the so-called Hoffmann Photograph Collection 1920-1944, consisting of (a) about 115,000 glass negatives (for a list of these, see inclosure 1), (b) about 1800 feet of other negatives (there is no list of these negatives, and (c) 132 albums containing about 7120 Leica file strips (for a list of these, see inclosure 2).

All of this material was once the property of the now defunct German firm, the Heinrich Hoffmann Press Illustrations Service (Presse - Illustrationen - Heinrich Hoffmann), formerly located in Berlin, Germany. The material was seized about 1945 by the Allied authorities for use in the international and United States war crimes trials held at Nurnberg, Germany. In March 1949 the Office of the United States Chief of Counsel for War Crimes transferred the collection to the Historical Division European Command (EUCOM) and that Division in turn dispatched the collection in October 1950 to this office.

A large part of the Hoffmann Collection is a record in photographic form of the activities of the former Nazi Party. In view of subparagraph 3 III, Part III, Section A of the Potsdam Agreement and Order No. 4 of 13 May 1946 of the Allied

Appendix 8

Control Council, whereby it was directed that all materials presenting National Socialist doctrine should be kept out of German hands permanently, I request that your office vest this collection and the literary rights therein in the Attorney General of the United States. This office desires at the same time to retain possession of the collection.

Mr. Brower
File in Departmental Records Br. AGO

[stamped]

RESTRICTED
File in Departmental Records Br, AGO
Becomes unclassified upon removal of all classified inclosures

I shall appreciate it if you will return the enclosed lists to this office after they have served your purpose.

2. Incls
1. Lists of Glass Negatives
2. Lists of Leica Film Strip

William Bergin
Major General, USA
Acting The Adjutant General

Memo for Record:

The character and general contents of the above letter are in pursuance of instructions given by Mr. Albert Green of OAP (code 197, 711 or 712) to Brower. The only papers related to the case which OAP desires are the inclosed lists. The OAP is not

Appendix 8

interested in knowing the opinion of JAG, EUCOM nor in seeing the claims of Heinrich Hoffmann, Jr. Requests for above att. was initiated as a result of the present efforts of Heinrich Hoffman, Jr., son of the originator of the collection, to have the collection returned to him.

JAGO's (Capt. L.E. Williams, Code 131, I 535g5) first comment about the above case was that vesting was not necessary since JAGO deemed Army already had legal title to the collection, but after talking with Mr. Green, JAGO felt that vesting would strengthen Army's legal hold on the collection.

Brower/Code 1226
Archivist for Special Collections
Departmental Records Br. AGO
JOHN A. KELLY
Brig. Gen., USA
Chief, Adm. Services Div. AGO

[stamped]

RESTRICTED
File in Departmental Records Br, AGO
Becomes unclassified upon removal of all classified inclosures